

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA

In re:

Juan Pablo Valdez,

Debtor.

**Case No. 24-12446-JDL
Chapter 13**

**Limited Motion to Stay Order Pending Determination of Appeal,
Brief in Support, Notice of Opportunity for Hearing, and Certificate of Service**

Notice of Opportunity for Hearing

Your rights may be affected. You should read this document carefully and consult your attorney about your rights and the effect of this document. If you do not want the Court to grant the requested relief, or you wish to have your views considered, you must file a written response or objection to the requested relief with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102, no later than 14 days from the date of filing of this request for relief. You should also serve a file-stamped copy of your response or objection to the undersigned movant (and others who are required to be served) and file a certificate of service with the Court. If no response or objection is timely filed, the Court may grant the requested relief without a hearing or further notice.

The 14-day period includes the three (3) days allowed for mailing provided for in Bankruptcy Rule 9006(f).

Introduction

John T. Hardeman, Chapter 13 Trustee, requests a limited stay, preventing the distribution of the Debtor's payments to creditors until the appeal of the confirmation order is resolved. Without a limited stay, a reversal by the Tenth Circuit Bankruptcy Appellate Panel of the confirmation order will cause the Trustee irreparable harm and the appeal would be rendered moot if the Trustee disburses the payments from the Debtor ("Valdez" or "Debtor") to creditors. Therefore, the Trustee respectfully requests that the Court hold the Order Confirming Chapter 13 Plan entered on January 29, 2025 [ECF Doc. 47] in abeyance and stay the distributions to creditors until after the appeal concludes. The Trustee is only seeking to stop disbursements under the plan. He is not seeking to stay the other provisions — including the Debtor's monthly payments — of the confirmation order. In support of this Motion, the Trustee shows the Court as follows:

Factual Background

On January 25, 2025, the Court held an evidentiary hearing on the Debtor's Chapter 13 Plan and Humberto Trejo Dominguez's ("Creditor") objection to confirmation. The Court confirmed the Debtor's Chapter 13 Plan over Creditor's objection, and now, Creditor is appealing the Court's decision. Pending confirmation, the Debtor dutifully made payments to the Trustee under the proposed terms of his plan.

Arguments and Authorities

A limited stay is necessary in this case to prevent irreparable injury to the Trustee if the Creditor is successful. Until confirmation, the debtor is required to make payments under the proposed plan and the funds are held until the plan is confirmed or the case is converted or dismissed. Normally after confirmation of a plan, the Trustee begins making disbursements to the creditors as directed by the confirmation order. The confirmation order is the keystone of a chapter 13 case so that a reversal or changes to it could irreparably injure the Trustee. Therefore, the Trustee seeks an order staying distributions under the plan until the appeal is concluded.

I. The Trustee Meets the Standards for a Stay.

The standard for granting a motion to stay pending an appeal mirrors that for granting a preliminary injunction. *In re Goss*, 2008 WL 824303* 1 (E.D. Okla. March 26, 2008). When deciding whether to grant a discretionary stay a court must determine the following: (1) likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) irreparable injury to the moving party unless the stay is granted; (3) no substantial harm to the other interested persons; and (4) no harm to the public interest. *Id.* (citing *In re Lang*, 414 F.3d 1191, 1201 (10th Cir. 2005)). The grant of a stay is a matter of "judicial discretion" that is "dependent upon the circumstances of the particular case." *Nken v. Holder*, 556 U.S. 418, 419 (2009).

A court "'in the exercise of judgment' must "'weigh competing interest and maintain an even balance' between the court's interests in judicial economy and any possible hardship to the parties[.]" *Belize Social Dev. Ltd. v. Government of Belize*, 668 F.3d 724, 732–33 (D.C. Cir.

2012) (quoting *Landis v. North American Co.*, 299 U.S. 248, 254–55 (1936)). Applying these factors, a stay should be granted.

A. Likelihood of Success on the Merits.

With respect to the first factor, the moving party does not need to prove certain victory on appeal. See *Nken*, 556 U.S. at 419. Rather, courts have routinely held that a stay pending appeal is warranted in cases presenting difficult and unsettled legal questions. See e.g., *City of Oakland v. Holder*, 961 F.Supp.2d 1005, 1012 (N.D. Cal. 2013). The first factor does not weigh in favor of the Trustee. The Trustee saw nothing in the confirmation process or the overruling of the Creditor's frivolous and irrelevant arguments to suggest that the Creditor has any chance of success on appeal. However, the irreparable harm to the Trustee should the Creditor prevail outweighs this factor.

B. Irreparable Injury to the Movants if a Stay is not granted.

To constitute irreparable harm, the injury must be certain, actual, and not theoretical. *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003). A movant satisfies the irreparable harm requirement by demonstrating that the risk of harm cannot be compensated after the fact by monetary damages. *Greater Yellowstone Coalition v. Flowers*, 321 F.3d 1250, 1258 (10th Cir. 2003). The confirmation order is the keystone of Chapter 13 cases; it lays out the Debtor's and Trustee's obligations and is binding on all creditors. Without a final confirmation order, the case cannot proceed normally. Here, without a stay, should the Creditor be successful in his appeal, the Trustee would be responsible for recovering the funds disbursed. Recovering funds from creditors is a time and resource consuming process without a guarantee of success. If the Trustee is unsuccessful in recouping funds disbursed while the appeal is pending, any decision of the BAP would be meaningless.

If the appeal takes six months, the Trustee will have received and disbursed over \$15,000 under the confirmation order during that period. If the Creditor is successful, and the confirmation order is reversed, the Trustee will be forced into a position of needing to recoup

funds. While creditors sometimes voluntarily return funds, in order to compel creditors to return the funds to the bankruptcy estate, the Trustee has to file adversary proceedings against any creditor that does not voluntarily return distributions that it has received. As of the end of January 2025, the Trustee is administering 2,929 cases, and monthly filings are trending up. Time is one of the Trustee's and his staff's most constrained resources. Awarding the Trustee a monetary judgment, in the event the Bankruptcy Appellate Panel reverses this Court's ruling will do nothing to relieve the administrative burden of recouping funds.

C. No Substantial Harm to Other Interested Persons or to the Public.

The Trustee will hold the funds pending the outcome of the appeal. The only harm that will come to creditors is the delay of receiving distributions. This will initially only affect the secured creditors. The harm of delaying distributions is outweighed by the harm to the Trustee of needing to recoup funds should the BAP reverse the confirmation order.

D. There is no harm to the public interest.

Finally, there is no harm to the public by issuing the stay. This is a routine bankruptcy proceeding, and the case does not present any matters of public importance so there will be no harm to the public interest. Staying distributions under the plan will preserve the Trustee's resources so that when the appeal is concluded, he can quickly disburse the funds to the rightful parties.

Conclusion

As the confirmation order is the central to a Chapter 13 case, the decision of the appellate plan could have significant impacts on the Trustee. Therefore the Trustee requests disbursements under the plan be stayed until the appeal is concluded.

Respectfully,
s/David S. Burge
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Attorney for Trustee

Certificate of Service

This is to certify that on February 11, 2025, a true and correct copy of the foregoing instrument was served by U.S. Mail, postage prepaid, on the following:

See attached matrix.

s/David S. Burge
David S. Burge, OBA # 31505

ACHIEVE PERSONAL LOANS
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PHOENIX, AZ 85002-2340

ASPIRE CREDIT CARD
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ATLANTA GA 30348-5555

BANKRUPTCY LEGAL COUNSELING
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CITICORP CR SRVS/CENTRALIZED
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FIRST FIDELITY BANK
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FIRST PREMIER BANK
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FREEDOM MORTGAGE
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RESURGENT CAPITAL SERVICES
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